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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,542	03/31/2006	Hartmut Breithaupt	BREI3003FJD	4804
23364 7590 04/07/2010 BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314-1176				
EXAMINER NIESZ, JASON KAROL				
ART UNIT 3751		PAPER NUMBER		
MAIL DATE 04/07/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/537,542

Applicant(s)

BREITHAUP, HARTMUT

Examiner

JASON K. NIESZ

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-11, 13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-11, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date _____
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 8-11, 13 and 14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 8-11, 13 and 14 claim a process which is not required to be implemented by a particular machine, and does not transform a particular article.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-11, 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "determining the averaging of n filling instances," it is not clear what is being determined here.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 8-11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant admitted prior art.

In Re claim 8 at Page 4, lines 24-32 applicant describes a method for controlling the after-run amount in a filling unit comprising determining the average of n filling instances. Applicant further discloses after a change in filling conditions, averaging over n filling instances.

Applicant admitted prior art does not disclose averaging the after-run value over m instances, where m is less than n .

However, one of ordinary skill in the art would know that the number of filling instances averaged to determine an after run value could be advantageously varied in response to filling conditions. Therefore, it would have been obvious to one of ordinary skill in the art to modify the method in the applicant admitted prior art by reducing the number of filling instances averaged after receiving a signal indicating changes in the filling conditions, in order to more quickly calculate the after-run amount using fill values which do not represent the disruption caused by the change.

In Re claim 9, one of ordinary skill in the art would recognize a machine-start/stop signal as a change in the filling conditions.

In Re claims 10 and 11 applicant admitted prior art discloses the claimed invention except for the range of values to use for n and m . It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the

optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

In Re claim 13 it was well known in the art at the time of the invention to design an apparatus to shut down after a predetermined period of idleness. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of the applicant admitted prior art by signaling a machine-stop in the event that the filling process is idle for a time, in order to signal a change in filling conditions.

In Re claim 14 it was well known in the art at the time of the invention to manually instigate an external machine-stop/start. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a machine-stop or start signal generated by an external signal, in order to signal a change in the filling conditions.

Response to Arguments

4. Applicant's arguments filed 01/26/2010 have been fully considered but they are not persuasive. The statement "determining the averaging of n filling instances" is not a clearly defined method step and is indefinite regardless of the applicant's explanation of it's meaning in the arguments. Regarding the applicant's argument regarding the state of ordinary knowledge in the art. The act of varying the sample size collected when performing a statistical function is old and well known in the art.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON K. NIESZ whose telephone number is (571)270-3920. The examiner can normally be reached on mon-fri 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason K Niesz
Examiner
Art Unit 3751

/Gregory L. Huson/
Supervisory Patent Examiner, Art Unit 3751